

BIGFORK LAND USE ADVISORY COMMITTEE
Approved Minutes for October 26, 2017
4:00 PM Bethany Lutheran Church – Downstairs Meeting Room

Chairwoman Susan Johnson called the meeting to order at 4:04 p.m.

Present: Committee members: Joyce Mitchell, Susan Johnson, Shelley Gonzales, Jerry Sorensen, Tim Kittle and Chany Ockert. Public: 14 members from the public. Flathead County Planning and Zoning: Mark Mussman.

The agenda was approved (m/s, J. Sorensen/J. Mitchell), unanimous.

Minutes of the August 31, 2017 meeting were approved, as amended (m/s, J. Mitchell/C. Ockert), unanimous.

Administrator's Report and Announcements:

Sign-in sheet passed around. Planning and Zoning website announced for all documents regarding minutes, agendas, and applications. Website: flathead.mt.gov/planning-zoning/documents.

Public Comment:

None

Application:

FPP-17-08 Resub Lt 14 Eagle Bend: A request from Cherie Hansen with technical assistance from TD&H Engineering for preliminary plat approval of the Re-subdivision of Lot 14A, Eagle Bend West No. 5, a proposal to divide the property into the two originally created lots of the Eagle Bend subdivision. The property is located at 316 and 318 Canal Street and would be served by the Bigfork Water and Sewer District. The property is currently zoned RC-1 (Residential Cluster) and can legally be described as Lot 14A in Eagle Bend West No. 5 in Section 27, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.

Staff Report:

Mark Mussman, Planning and Zoning Department, presented the application. There were no questions.

Applicant Report:

TD&H Engineering represented the applicant Cherie Hansen. Rick Swan stated that the building on 318 Canal Street will be removed, not remodeled as stated in the staff report.

Q. Sorensen: Why were the two lots combined? A. TD&H: I don't know. Mussman stated that any new building on 318 Canal Street will conform to bulk and dimension and setback requirements.

Q. Gonzales: Referred Mussman to page 14, paragraph 2, Conclusion, of the Staff Report. It appears this paragraph is referencing a different property. Mussman reworded the paragraph to read as follows: "Should the Flathead County Board of Commissioners choose to grant preliminary plat approval to the division of Lot 14A, the draft conditions should be considered to supplement the decision to mitigate impacts anticipated as a result of the subdivision."

Public Comment:

Bill Whitsitt, president of the Eagle Bend West Home Owner's Association asked that the committee add a condition to the approval that would require the applicant to remove the garage at 318 Canal Street before the subdivision occurs. He stated that if the subdivision is approved before the garage is removed

the new lot with the garage would automatically be in violation of zoning regulations, the CC&Rs and the HOA.

Q. Mitchell: Were the HOA fees of the two lots ever combined? A. Whitsitt: They were combined, and fees will be assessed when the new subdivision is approved.

Q. Mitchell: Will the subdivision create more lots than were initially approved for in the total subdivision? A. Whitsitt: I'm not sure of any other changes. Mussman stated that the number of originally approved lots will remain the same. Whitsitt praised Hansen's working with the HOA.

Q. Mitchell: Is 318 Canal Street the lot with the garage? A. Whitsitt: Yes.

Q. Johnson: Is there a time frame on the removal of the garage? A. Mussman: It must be removed before final plat.

Q. Sorensen: To TD&H, Will the dismantle come before final plat? A. TD&H: Yes.

Dale Carlson-109 Harbor Way. He bought 2 lots and combined them, then built a home that covers part of both lots. He opposes the subdivision of the applicant's lots.

Q. Mitchell: Why are you opposed to the subdivision? A. Carlson: The subdivision is not allowed in the CC&Rs. Bill Whitsitt stated that the HOA attorney indicated that the state laws and county zoning is senior to HOAs and CC&Rs.

Q. Gonzales: To Mussman, Does county zoning trump HOAs and CC&Rs? A. Mussman: The county is not party to the CCRs, but this is not a further subdivision but a re-subdivision of the original two lots.

Q. Ockert: When were the lots combined? A. Mussman: December 2000.

A discussion followed regarding whether there should be a condition added that the applicant is following the terms of the CC&Rs and the HOA. Also, it was stated by Mitchell that the lots created by the subdivision will be consistent with the originally created lots. Sorensen suggested that the applicant and HOA agree on the lot subdivision and that the subdivision complies with the CC&Rs.

Public Agencies:

None

Committee Discussion:

It was moved by Sorensen and seconded by Gonzales to adopt the Findings of Facts. There was no discussion and the Findings of Facts were adopted unanimously.

Mitchell moved to add condition #16 as follows:

The existing structure at 318 Canal Street must be removed as a condition of approval in order to eliminate a conflict with existing HOA CC&Rs and zoning regulations.

Ockert seconded the motion. Motion passed unanimously.

Sorensen moved to add condition #17 as follows:

Applicant shall demonstrate to the HOA's Board of Directors, that the requested subdivision is in compliance with all covenants, conditions and restrictions.

Mitchell seconded the motion. Motion passed unanimously,

Vote on Application:

A motion to forward a recommendation on FPP-17-08 Resub Lt 14 Eagle Bend, as amended, to the Planning Board to approve the application was made by Chany Ockert and seconded by Jerry Sorensen. Motion passed unanimously.

Mussman: The Planning Board will hear this application beginning at 6 p.m. on November 8, 2017, 2nd floor conference room of the South Campus Building, #40 11th Street West, Suite 200, Kalispell, MT 59901

The committee recommended to staff that the two very similar applications by the Myers be considered as one for presenting the staff report, applicant report and question by the committee and the public. Voting would be on the individual applications. Staff agreed.

Committee member Chany Ockert, who resides at 255 Echo Chalet, 1/2 mile from the applicant, stated she had not talked to the Myers' regarding the applications, has no conflict of interest, and therefore did not need to recuse herself.

FACU-17-10 and FACU-17-11: A request from William & Alana Myers for two (2) conditional use permits for the establishment of 'Short Term Rental Housing' on properties located at 988 and 1006 Myers Lane near Bigfork, MT. The subject properties are each approximately 5 acres in size and zoned SAG-5 (Suburban Agricultural) in the Bigfork Zoning District. The properties can legally be described as Lot 2 of Ten Arrows Ranch Subdivision and Tract 4 in NW ¼ NE ¼ COS 20120-A in Section 17, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana.

Staff Report:

Mark Mussman of the Planning and Zoning Department presented the applications. The two applications are each on 5+ acre lots in SAG-5 zoning. The text amendment to allow Short-Term Rentals (STR) was adopted by the county commissioners on August 7, 2017. The Myers' come into Planning and Zoning the following day to apply for Administrative Conditional Use Permits on two properties identified as 998 and 1006 Myers Lane in Bigfork.

Q. Gonzales: For clarification, are these applications considered Administrative CUPs, or CUPs as stated in the above presented applications. A. Mussman: CUPs.

Ockert to Mussman. She thanked him for bringing the CUP applications to BLUAC. Mussman stated that this was done in accordance with the BLUAC By-Laws.

Q. Johnson: Does that mean all STR applications in the Bigfork Zoning District will go through BLUAC first? A. Mussman: Only those with adverse comments from the public will be directed first to BLUAC.

Q. Sorensen: One lot has one cabin and the second lot has a cabin, a barn, and a bunkhouse. Is the application on the lot with the cabin, barn, and bunkhouse only for rental of the cabin? A. Mussman: Yes.

Q. Gonzales: Does not the bunkhouse constitute too many buildings on the one lot in SAG-5 zoning? A. Mussman: Not necessarily.

Q. Mitchell: Is there a septic permit for each cabin on each lot? A. Mussman: Each lot's cabin has a 3-bed septic permit.

Q. Mitchell: Is there a bathroom in the barn? A. Bill Myers, applicant, no.

Q. Mitchell: Is there a bathroom in the bunkhouse? A. Myers, no.

Q. Sorensen: Regarding Ken Kalvig's letter dated August 31, 2017 he states that granting conditional use permits is "a matter of grace". (CUP Section 2.06.090 Burden of Proof), is that in the zoning regulations? A. Mussman: I'll have to get back to you on that tomorrow.

Q. Mitchell: Cited Resolution 955HW-Short-term Rental Housing 4.16.110 If there are substantive and valid conditions of disturbances of the peace for health and safety violations related to the operation of STR Housing, and we have been inundated with complaints of disturbances, how will you address the problems? A. Mussman: STR violations will go before the Board of Adjustment (BOA) for a revocation

hearing. As an example, if the septic system is over taxed, a request for revocation of the CUP would go before the BOA.

Q. Mitchell: If the applicant is known to have a history of violating zoning regulations, how are we expected to recommend applications when these violation issues persist? A. Mussman: Planning and Zoning used review criteria for the applications. There is nothing in the review criteria that takes history into account. There are conditions of approval and if the conditions are not met, the applicant will be subject to revocation.

Q. Gonzales: But you are still putting the onus on the community to manage CUP compliance of these applicants. A. Mussman: Approval of a CUP is a privilege. If any applicant has an approval for a STR, if they want to keep their STR, they will comply with the conditions. He agrees that the Myerses did market and use their property for STRs in advance of the county adopting the STR Resolution and in advance of applying for the CUP.

Q. Gonzales: What will happen when the Myerses apply for a wedding venue application? A. Mussman: The application would go through the review for a High Impact Use.

Q. Johnson: How long does it take to stop a STR business who violates the conditions of a CUP? A. Mussman: It is not a fast fix. I will take some time requiring notice to the permit holder, neighbors, legal notice in the local newspaper, etc. I would take 3 to 4 weeks before it would go before the BOA.

Q. Johnson: What happens if the applicant takes reservation and then is shut down for CUP violations? A. Mussman: There would be irreputable harm to their reputation for canceling reservations.

Comment by Mitchell: Considering the past complaints, you are asking the neighbors to be the watchdog.

Q. Sorensen: Does a cause for revocation go before the BOA? A. Mussman: Correct.

Applicant Report:

Bill Myers stated that the use of STRs on his property is a more neighborly use of their property versus weddings. His presentation is for both applications. He knows that they cannot use the bunkhouse, barn, or offer RV rental sites. Myers addressed written objections by neighbor Dan DeMars which was related to noise. Myers will not allow amplified music. Myers stated that the dogs that went on DeMars' property were not his or guest's dogs. DeMars stated that he lost a long-time renter due to the noise from past weddings and now the STRs. DeMars also referred to large groups and RVs at the applicant's property. Myers said the RVs belonged to his family. Myers also stated that DeMars had cameras pointed at his property.

Myers addressed written objections by neighbor Lance Morgan. Myers believes that Morgan feels that STR application is a backdoor to hold weddings. Myers gave the committee a letter dated September 18, 2017 from Ken Kalvig, Morgan's attorney. Myers stated that since they do not have a CUP for weddings they would never have them. Myers commented on a call to Planning and Zoning that it looked like the Myers' were having a wedding back in August. He stated that we would not do weddings as we would lose the STR approval. He stated that they did have a family wedding on August 27, 2017, on the property but they notified Planning and Zoning in advance as they wanted to rebuild their reputation.

Myers stated that on October 12, 2017, they removed all listing information for their STRs from the Air BnB website. He acknowledged that although rentals on the subject lots did occur in July and August, Morgan and DeMars did not complain.

Comment by Johnson: She referenced the Myers' Air BnB ads that allow more than five guests in the cabins. Myers said that is not on the site now.

Both Mitchell and Kittle confirmed that the ads on Air BnB as of August state that there is room for 5 adults and teens, which is more than four people in the cabins. Mitchell again stated that the applicant has a history of disregard for rules and regulations. She cannot wipe the slate clean for someone who has

consistently violated the zoning regulations prior to county's approved resolution for STRs and approved CUPs for STRs. Mussman confirmed that information.

Comment by Mitchell. Based on the Myers' Air BnB reviews, it appears more people are in the cabins than would be permitted. She has a hard time believing the application limits in each cabin versus what the reviewers are saying and the promotional materials from the Myers'. Myers reply: It is not their intention to use the STRs for backdoor weddings and RV rental spaces.

Q. Ockert: What do you mean by family reunions and other celebrations. A. Myers: Birthday parties.

Q. Ockert: How do you define high impact recreation use? A. Mussman: Traffic count.

Q. Johnson: Will you ever host events on your property? A. Myers: No.

Q. Kittle: Have you ever had an approval for weddings on your property? A. Myers: No.

Q. Kittle: Have you ever had approval for STRs? A. Myers: No. Kittle, but you have been doing all of these activities. Myers stated that the repercussions from prior rentals would end their STR permit.

Comment by Mussman: He stated that Kavig and DeMars brought the Air BnB ads to his attention. The ads had more offerings than stated in the applications by the Myers'. Myers agreed to modify the applications to eliminate the "extra" services. Mussman agreed that the Myers' were renting the cabins well in advance of the passing of the STR resolution.

Q. Kittle: Did you pay any bed taxes during the summer rentals? A. Myers: Not yet.

Q. Ockert: It seems the support letters are from family members. A. Myers: Yes.

Comment by Mussman: He stated a letter dated June 20, 2017, from them the Department of Revenue that the Myers' had been approve for a bed tax. There is no approved public accommodation license which must be signed off by Planning and Zoning only after there is an approval for the STR CUP applications.

Q. Ockert: The Air BnB ad states there are accommodations for more people at \$50 per person. A. Myers: That was intended for the bunkhouse, but that is now off the table.

Q. Mitchell: Has there been a site evaluation done? A. Mussman: No. If the bunkhouse has a bathroom it would be a violation of the county sanitation permit.

Public Comment:

Dan DeMars: He does have surveillance cameras to protect his property and business at the recommendation of the county Sheriff's Department. They have been up for 8-9 years and are not pointed at the Myers' property. DeMars lost his long-time renter on October 1, 2017 due to the Myers' activities. He is opposed to STRs in residential areas and that the residents are responsible for policing the STRs.

Ken Kalvig: Spoke on behalf of Lance Morgan who states he is not spying on his neighbors, the Myerses. The burden of proof rests with the applicant, not the BOA. He paraphrased BLUAC member Tim Kittle's question to Myers...can this happen again? Can you follow the law? He cited all the Air BnB ads by the Myerses and that the applications do not reflect what they are promoting to the public. Kalvig referenced a memo dated February 18, 2016 from George Ferris of Planning and Zoning, subject the Myerses, that STRs are not permitted, the barn rental is not allowable without a CUP. The Myerses continue to do what is not allowed. Mrs. Myers was convicted of violating zoning laws in 2014. Mr. Morgan is disappointed by the county's lack of action on the zoning violations. He referred to the Myerses lack of truthfulness and questions their compliance with zoning going forward.

Mr. Myers replied that he is 100% compliant with county regulations. On August 27, 2017, they had a family wedding and notified Planning and Zoning in advance. Myers is in the position to self-police and enforce county regulations.

Kalvig further stated that the Myers' applications are incomplete as there is no site plan, and that the applicants have not met the burden of proof that they can abide by the zoning regulations.

Craig Wagner: Stated that the applications should be denied.

Johanna Hiatt: Stated that Planning and Zoning does not follow up on zoning violations or enforce laws. The county must stop enabling law breakers at the detriment of the land owners.

Staff Reply:

Mussman stated that he understands the frustration of Morgan, DeMars, and Hiatt with code enforcement. Planning and Zoning does not search out for zoning violations and, in the case of the Myerses, he did not know they were violating zoning regulations at the time of their applications.

Applicant Reply:

Myers stated that they are compliant with zoning regulation but did "jump the gun" by renting the cabins in advance of approval for STRs in the county. He will not use approved STRs as a backdoor for weddings. He stated that the bunkhouse is not connected to the septic system of a cabin. He said that Kavig's assumption that they will violate the zoning laws is untrue.

Committee Discussion:

FACU-17-10

Sorensen recommended adding Finding of Fact #5, as follows:

This committee has concerns of the applicants' lack of compliance due to past violations of zoning and misrepresentations concerning past advertising and past high impact events.

Mitchell suggested that the applications be returned to Planning and Zoning for a complete application and site plan and inspection if the bunkhouse and barn by Environmental Health for compliance. Sorensen did not know the benefits of sending the applications back to Planning and Zoning. Mitchell said it would force an inspection. Sorensen said the Environmental Health department has enough information to force an inspection.

Mussman stated that the applications cannot be returned due to the timing requirements to submit the applications to the BOA.

It was moved by Sorensen and seconded by Mitchell to adopt the Findings of Facts, as amended. There was no discussion and the Findings of Facts were adopted unanimously.

Vote on Application:

A motion to forward a recommendation on FACU-17-10, as amended, to the Board of Adjustment to deny the application was made by Jerry Sorensen and seconded by Tim Kittle.

Ockert stated that application does not comply with the Bigfork Neighborhood Plan, and stated the following from the Bigfork Neighborhood Plan:

Page 2, "The neighborliness and community enthusiasm must be nurtured as part of that social legacy." Policy 2.2, "Alternative economic development should be supported but not to the detriment of the quiet enjoyment of the residents within the Bigfork Planning Area".

Goal 8, "Encourage housing that maintains traditional development patterns while protecting property values and natural resources."

Sorensen again referenced Conditional Use Permits, section 2.06.090, the burden of proof is on the applicant and not the BOA

Motion to recommend denial passed unanimously.

FACU-17-11

Mitchell moved to apply the outcome of FACU-17-10, including the addition of Finding of Fact #5 and the related motions and approval of Findings of Facts. The motion was seconded by

Vote on Application:

A motion to forward a recommendation on FACU-17-11, as amended, to the Board of Adjustment to deny the application was made by Jerry Sorensen and seconded by Tim Kittle.

Motion to recommend denial passed unanimously.

Mussman: The Board of Adjustment will hear these two applications beginning at 6 p.m. on November 7, 2017, 2nd floor conference room of the South Campus Building, #40 11th Street West, Suite 200, Kalispell, MT 59901

Committee Reports:

None

Old Business:

Chairwoman Johnson created a draft of a BLUAC secretary job description. At our last meeting she gave a copy of the draft job description to Lou McGuire. Lou was going to meet with a friend who may be interested in the position. Shelley Gonzales stated she will contact Paul Mutaccio regarding the Bigfork High School's Ambassador Program for a possible student to be the recording secretary. As of our latest meeting, the position still needs to be filled.

New Business:

None

Adjourn:

Chairwoman Johnson adjourned the meeting at 7:35 p. m.

Respectfully submitted,
Shelley Gonzales, Acting Secretary